Seloga Jaya Sdn Bhd v UEM Genisys Sdn Bhd

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(F)-20 OF 2008(W)
RICHARD MALANJUM CJ (SABAH AND SARAWAK), JAMES FOONG AND HELILIAH FCJJ
25 JANUARY 2010

Contract — Formation — Consideration — Claim for payment for work done on subcontract — Whether agreement between parties constituted a contract — Whether agreement could not result in contract for lack of consideration — Contracts Act 1950 s 10

Contract — Terms — Construction — Form of payment — Whether specified to be money — Whether other form of payment acceptable

Subang Jaya Development Hotel Bhd ('the employer') appointed the appellant as the main contractor for the renovation and extension of the Merlin Hotel ('the project'). The respondent was the nominated subcontractor, of the appellant, for the installation of air-conditioning and ventilation in the project and for the supply and installation of the kitchen equipment in the project. Although the employer had nominated the respondent to execute the jobs, the appellant accepted the respondent as the nominated subcontractor in respect of both jobs and a formal subcontract was executed on 27 July 1996 for these jobs. When the appellant and the respondent completed all their respective work on the project but before they were fully paid by the employer, the latter became insolvent. The employer together with its parent company then proposed a scheme of arrangement to issue RM1 nominal amount of irredeemable convertible unsecured loan stock ('the stock') for every RM1 of debt owing to the scheme of creditors. The appellant then wrote to the subcontractors including the respondent, informing them of the employer's offer and to ask whether the latter were in favour of the composite scheme of arrangement. The respondent replied that the settlement proposal was unacceptable to them. In any case, the scheme of arrangement was sanctioned by the court in accordance with s 176 of the Companies Act 1965 ('Act') when it was approved by a majority of the scheme of creditors. The stock, including the amount due to the respondent under the subcontract, was in due course issued to the appellant in full and final settlement of the debt due by the employer to the appellant. The appellant then wrote to the respondent to inform them that they would be transferring 219,425 units of the stock to the respondent but the respondent queried the basis for the allocation of 219,425 units of the stock against the

outstanding sum of RM1,386,646.84 due to them. The respondent then issued a s 218 of the Act notice to the appellant for the non-payment of the said outstanding sum. This prompted the appellant to file the present action whereby it sought, inter alia, a declaration that it held 1,386,646 units of stock on behalf of the respondent in full and final settlement of the subcontract works; an injunction to prevent the respondent from winding up the appellant; damages and cost. The appellant also filed an application for an interlocutory injunction to restrain the respondent from winding up the appellant until disposal of this suit. The respondent retaliated by filing a motion under O 14A of the Rules of the High Court 1980 for this matter to be tried on a question of law. The High Court found in favour of the respondent in both applications and hence this appeal. In this appeal the appellant submitted that there was no contract between itself and the respondent and that even if there was an agreement it could not result in a contract because of the lack of consideration. The appellant further submitted that the High Court erred in its interpretation of the 'pay when paid' clause, in that the clause should have been interpreted to mean that the transfer of the stock was sufficient satisfaction of the debt due to it. The main issues to consider in this case were whether the agreement between the appellant and the respondent constituted a contract and whether the appellant after having been paid by the employer in the form of stocks rather than money could settle with the subcontractor respondent in the same form.

Held, dismissing the appeal with costs:

(1) Although the method of appointment of a nominated subcontractor may be peculiar to the building industry, the appellant and the respondent had freely consented to enter into a contract in writing with terms and conditions governing the respective rights and obligations of the parties. The consideration in the contract was the right of the respondent to be paid by the appellant upon completing the subcontracted works as specified, subject the appellant being first paid by the employer. In fact, the contract between the parties in this case had all the hallmarks of a valid agreement described in s 10 of the Contracts Act 1950 and as such the appellant cannot deny the existence of a contract (see paras 24–26).

(2) In both the letter of offer by the appellant to the respondent and the subsequent formal agreement entered into by the parties the contract sum was explicitly set out to be in 'Ringgit Malaysia'. The plain construction of the terms in the contract between the parties provided that there can be no other form of payment except by money 'upon receipt of main contract payment from the employer'. As the appellant was paid by the employer in stock and since the appellant did not object to the payment in the form of stock it was taken that the appellant had accepted this form of payment. Having accepted payment for the main

A contract debt, the appellant had no option except to pay the respondent in the form as stipulated ie money rather than by stock (see paras 27–29).

[Bahasa Malaysia summary

B Subang Jaya Development Hotel Bhd ('majikan') melantik perayu sebagai kontraktor utama bagi pengubahsuaian dan penambahan Hotel Merlin ('projek tersebut'). Responden merupakan subkontraktor yang dilantik, kepada perayu, bagi pemasangan penghawa dingin dan pengalihan udara dalam projek tersebut dan untuk membekalkan dan pemasangan C kelengkapan dapur dalam projek tersebut. Walaupun majikan telah melantik responden untuk menjalankan kerja-kerja tersebut, perayu menerima responden sebagai subkontraktor yang dilantik bagi kedua-dua kerja tersebut dan satu subkontrak formal disempurnakan pada 27 Julai 1996 bagi kedua-dua kerja ini. Apabila perayu dan responden telah menyelesaikan D kesemua kerja-kerja mereka ke atas projek tersebut tetapi sebelum mereka dibayar sepenuhnya oleh majikan, responden menjadi tak solven. Majikan, bersama dengan syarikat ibunya mencadangkan suatu skim untuk menerbitkan amaun nominal RM1 pinjaman stok tak boleh tebus boleh tukar tanpa jaminan ('stok') bagi setiap RM1 hutang kepada E peminjam-peminjam. Perayu kemudiannya menulis kepada subkontraktor-subkontraktor termasuklah responden, memaklumkan mereka tentang tawaran majikan tersebut dan untuk bertanyakan sama ada responden bersetuju dengan skim urusan komposit tersebut. Responden membalas bahawa mereka tidak menerima cadangan penyelesaian tersebut. F Walau bagaimanapun, skim urusan tersebut dibenarkan oleh mahkamah berikutan dengan s 176 Akta Syarikat 1965 ('Akta') apabila diluluskan oleh majoriti penghutang skim. Stok tersebut, termasuklah jumlah yang terakru kepada responden di bawah subkontrak tersebut, diterbitkan kepada perayu sebagai penyelesaian penuh dan muktamad hutang majikan kepada perayu. G Perayu kemudiannya menulis kepada responden untuk memaklumkan mereka bahawa mereka akan memindahmilik 219,425 unit stok kepada responden tetapi responden mempersoalkan dasar penguntukkan 219,425 unit stok tersebut dengan jumlah yang terakru sebanyak RM1,386,646.84. Responden kemudiannya mengeluarkan notis di bawah s 218 Akta kepada H perayu bagi jumlah yang masih belum di bayar. Ini membuatkan perayu memfailkan tindakan ini yang mana ia memohon, antara lain, perisytiharan bahawa ia memegang 1,386,646 unit stok bagi pihak responden untuk penyelesaian penuh dan muktamad kerja-kerja kontrak tersebut; suatu injunksi untuk menghalang responden daripada menggulung perayu; ganti I rugi dan kos. Perayu juga memfailkan permohonan untuk injunksi interlokutori untuk menghalang responden menggulung perayu sehingga tindakan ini selesai. Responden bertindak balas dengan memfailkan usul di bawah A14 Kaedah-Kaedah Mahkamah Tinggi 1980 agar perkara ini dibicarakan atas persoalan undang-undang. Mahkamah Tinggi memutuskan

memihak kepada responden dalam kedua-dua permohonan dan justeru, rayuan ini. Dalam rayuan ini, perayu menghujah bahawa tiada kontrak antaranya dan responden dan bahawa walaupun wujudnya persetujuan, persetujuan tersebut bukanlah suatu kontrak disebabkan ketiadaan balasan. Perayu selanjutnya berhujah bahawa Mahkamah Tinggi telah khilaf dalam tafsirannya terhadap klausa 'pay when paid', yang mana klausa tersebut harus ditafsirkan sebagai bermaksud bahawa pemindahan stok tersebut adalah mencukupi bagi hutang yang terakru. Isu-isu yang perlu dipertimbangkan dalam kes ini adalah sama ada persetujuan antara perayu dan responden adalah kontrak dan sama ada perayu, setelah membayar majikan dengan stok dan bukannya wang, boleh menyelesaikan hutang dengan subkontraktor responden dengan cara yang sama.

Diputuskan, menolak rayuan dengan kos:

(1) Walaupun cara perlantikan subkontraktor yang dicalonkan mungkin khusus untuk industri pembangunan, perayu dan responden telah bersetuju secara sukarela terhadap kontrak bertulis bersama terma-terma dan syarat-syarat yang mentadbir hak-hak dan kewajipan pihak-pihak. Syarat dalam kontrak tersebut merupakan hak responden untuk dibayar oleh perayu apabila kerja-kerja yang disubkontrakkan telah sempurna seperti yang dinyatakan, tertakluk kepada perayu dibayar terlebih dahulu oleh majikan. Malah, kontrak antara pihak-pihak dalam kes ini mempunyai semua ciri-ciri perjanjian yang sah di bawah s 10 Akta Kontrak 1950 dan oleh itu perayu tidak boleh menafikan kewujudan suatu kontrak (lihat perenggan 24–26).

(2) Dalam kedua-dua surat tawaran oleh perayu kepada responden dan perjanjian formal antara pihak-pihak, jumlah kontrak dinyatakan dengan jelas dalam 'Ringgit Malaysia'. Tafsiran biasa terma-terma dalam kontrak antara pihak-pihak memperuntukkan bahawa pembayaran hanya boleh dibuat dalam bentuk wang 'upon receipt of main contract payment from the employer'. Memandangkan perayu dibayar oleh majikan dalam bentuk stok dan kerana perayu tidak membantah kepada pembayaran sebegitu, maka disimpulkan bahawa perayu telah menerima pembayaran dalam bentuk sebegitu. Setelah menerima pembayaran bagi hutang kontrak utama, perayu tiada pilihan kecuali membayar responden dalam bentuk pembayaran yang telah dinyatakan, iaitu dengan wang dan bukannya dengan stok (lihat perenggan 27–29).]

Notes

For cases on consideration, see 3(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3769–3773.

For cases on construction, see 3(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 5342–5278.

Cases referred to

Gloucestershire County Council v Richardson [1969] 1 AC 480, HL (refd)

Interpro Engineering Pte Ltd v Sin Heng Construction Co Pte Ltd [1998] 1 SLR 694, HC (refd)

Northwest Metropolitan Regional Hospital Board v Bickerton & Sons Ltd [1970] 1 All ER 1039, HL (refd)

Legislation referred to

Companies Act 1965 ss 176, 176(1), 218

Contracts Act 1950 s 10

Rules of the High Court 1980 O 14A

Appeal from: Civil Appeal No W-02–179 of 2004 (Court of Appeal, Putrajaya)

William Leong (Puspawati Rozman with him) (William Leong & Co) for the appellant.

Sulaiman Abdullah (Syamsuriatina Ishak with him) (Nor Azmi & Co) for the respondent.

James Foong FCJ:

INTRODUCTION

[1] The facts of this case are undisputed and are relatively straightforward. The appellant was the main contractor for the renovation and extension of the Merlin Hotel, Subang ('the said project'). The owner was a private limited company known as Subang Jaya Development Hotel Sdn Bhd ('owner'). The owner was part of the Faber Group Bhd, a public listed company. The respondent was the nominated subcontractor of the appellant for the installation of air-conditioning and ventilation in the said project. The respondent was nominated by the owner and in the usual course of practice in the building industry accepted by the appellant. The pertinent part of the owner's consultant letter informing the appellant of this is as follows:

> We have been instructed by our Client, Messrs Subang Jaya Hotel Development Sdn Bhd to inform you that they have selected Messrs UEM Genisys Sdn Bhd (the Respondent) to be the Nominated Sub-Contractor to execute the Air Conditioning & Mechanical Ventilation Services Subcontract work for a tender sum of Ringgit Malaysia: Two Million Five Hundred and Ninety Three Thousand Eight Hundred and Sixty Two Only (RM 2,593,862.00) with a completion period of 28 weeks or to follow the main contract programme.
>
> In accordance with the condition of contract entered between yourselves and Messrs Subang Jaya Hotel Development Sdn Bhd, you are hereby instructed to accept the tender submitted by Messrs UEM Genisys Sdn Bhd and the said

tenderer is hereby declared to be the Subcontractor employed by you and shall be referred to as the 'Nominated Sub-Contractor'. A

[2] The appellant accepted the respondent as the nominated subcontractor and in paras 10 and 11 their letter to the respondent dated 30 November 1994 listed: B

> 10 You have agreed that payment will be made to you within Forty Five (45) days from the date of receipt by the contactor of any certificate of duplicate copy thereof from the Architect or until receipt of main contract payment from the Employer, whichever is later. C
>
> 11 In the event of any inconsistency between the terms of this Letter of Acceptance and the terms of the formal sub contract to be entered into between you and us, the terms of this Letter of Acceptance shall prevail. D

[3] The respondent accepted this condition by endorsing on this letter:

> We, the undersigned, hereby acknowledge receipt of the above Letter of Acceptance, a copy of which has been retained by us, and confirm that all the terms and conditions and stipulations are fully agreed to by us. E

[4] Subsequently, the respondent was also nominated as the subcontractor by the owner for the supply and installation of kitchen equipment in the said project and the price for this subcontract was RM1,060,000. The appellant accepted the respondent as their subcontractor in much the same manner and on the same terms and conditions as the first appointment. F

[5] A formal subcontract agreement between the appellant and the respondent was executed on 27 July 1996 for these jobs. G

[6] When all the respective works of the appellant and respondent were completed but before the appellant was fully paid by the owner, the owner became insolvent. On 13 October 1999, the owner and its parent company, the Faber Group Bhd together with another associated company, Faber Hotels Holdings Sdn Bhd, (all collectively known as the scheme of companies) obtained an order restraining creditors, including the appellant (which are referred to as scheme creditors) from taking any action against the owner to recover their debts. This was soon followed by a proposed scheme of arrangement under s 176(1) of the Companies Act 1965 whereby Faber Group Bhd shall issue RM1 nominal amount of irredeemable convertible unsecured loan stock for every RM1 of debt owing to the scheme creditors ('the FGB ICULS'). H I

A [7] These FGB ICULS were to be listed on the Kuala Lumpur Stock Exchange.

[8] As a result of this, the appellant wrote to its subcontractors, including the respondent, informing of them of this offer and highlighted:

B

> Strictly without prejudice to our rights and remedies in the event the Composite Scheme of Arrangement is approved (with or without modifications), we propose to settle any money payable to you in a similar form, manner and proportion as the moneys payable to us are settled under the said Composite Scheme of
C Arrangement. Kindly let us have your comments, if any, to our proposal by 20 November 1999, failing which we shall proceed accordingly on the basis that you are agreeable to our proposal and vote in favour of the said Composite Scheme of Arrangement (with or without any modifications).

D

[9] The respondent replied to inform that they 'are unable to accept the settlement proposal as stipulated' and 'reserve all our rights at law and under the subcontract'.

E [10] At a court convened creditors meeting held on the 22 November 1999, the said scheme of arrangement was approved by the statutory majority of the scheme creditors and this was later sanctioned by the High Court in accordance with s 176 of the Companies Act.

F [11] This resulted in a proportionate number of FGB ICULS issued to the appellant in full and final settlement of debt due by the owner to the appellant which included the amount due to the respondent under the subcontract.

G

[12] After the appellant received the FGB ICULS, the appellant wrote to the respondent informing them of this and requested the respondent to disclose their central depository system (CDS) account number so that 219,425 units of FGB ICULS can be transferred into the respondent's
H account.

[13] The initial response of the respondent was to query the basis for the allocation of 219,425 units of FGB ICULS against the outstanding debt due to them. Despite explanation by the appellant, the respondent issued a s 218
I of the Companies Act notice to the appellant charging the appellant for the non-payment of an outstanding sum of RM1,386,646.84 due to them.

ACTIONS AND APPLICATIONS BEFORE THE COURT

[14] This prompted the appellant to file this action against the respondent seeking:

(a) a declaration that the appellant is holding 1,386,646 FGB ICULS on behalf of the respondent in full and final settlement of the subcontract works;

(b) an injunction restraining the respondent, its servants and or agent from filing or proceeding to wind up the appellant; and

(c) damages and costs.

[15] This was soon followed by the appellant's application (encl 3) for an interlocutory injunction restraining the respondent from winding up the appellant until disposal of this suit.

[16] In retaliation, the respondent filed a motion (encl 12) under O 14A of the Rules of the High Court 1980 ('RHC') for this matter to be tried on a question of law and/or on the construction of the documents and agreements between the parties.

RULINGS OF THE HIGH COURT AND THE COURT OF APPEAL

[17] The High Court heard both encls 3 and 12 simultaneously and gave judgment in favour of the respondent in both applications. The reasons proffered by the High Court are:

> An examination of the applicable documents before effecting s 176 composite scheme of arrangement showed that the parties intended all payment to be in monetary terms. The defendant (respondent) was not involved in this scheme. The plaintiff (appellant) variously attempted to get the defendant (respondent) to accept the FGB ICULS as payment but failed to do so. In the circumstances there was no agreement between the parties to vary the terms of the contract entered into between them to make it incumbent upon the defendant (respondent) to accept the FGB ICULS as payment for the money owed to it.
>
> As there is no dispute that the plaintiff (appellant) had been paid by the employer, it followed that the plaintiff (appellant) had to pay the defendant (respondent) for the work done by virtue of the pay-when-paid clause as per the agreement which bound them both. As the agreement referred to payment in monetary terms, the plaintiff (appellant) could not force the defendant (respondent) to accept payment by way of FGB ICULS. In these circumstances, I agree with the submissions of learned counsel for the defendant (respondent) and allowed the application in encl (12) as prayed for and consequently dismissed encl (3) with costs.

[18] Dissatisfied with this decision, the appellant appealed to the Court of Appeal where their appeal was dismissed primarily on the following ground:

> From our reading, the words 'receipt of main contract payment' must be given its normal meaning. In our view, these words simply mean receipt of money and definitely not receipt in kind. The facts showed that the respondent never made any overt or implied gesture to accept payment in kind by way of FGB ICULS.

GROUNDS OF APPEAL

[19] The appellant raised three main grounds in this appeal:

(a) There is no contract in law between the appellant and the respondent.

(b) Even if there was an agreement between the appellant and the respondent, the contract cannot be sustained due to lack of consideration.

(c) The courts below had erred in construing the 'pay when paid' clause in the light of the factual matrix of this particular case and the custom and practice in the building industry and should have interpreted that the transfer of the FGB ICULS is sufficient satisfaction of the debt due to the respondent.

ANALYSIS

[20] It is our view that deliberation of this appeal requires us to understand the peculiarities of the building industry concerning nominated subcontractors, their appointment, their roles and legal implications. It is not uncommon for an owner or employer, aside from having appointed a contractor (whom we shall refer to as the main contractor) for a building project, to nominate a subcontractor for the same project in order to carry out certain specific work or works which require certain specialised skill or technique or who possesses a certain type of plant adapted for a certain kind of work in the project. It is also not unusual, like in this instant case, for the consultant to inform the main contractor of such nomination. As the price for such subcontracted job has not been included in the main contract but will be adjusted with such nomination, the main contractor normally would not object to the appointment imposed upon him. The reasons why an employer would prefer this approach rather than leaving it to the main contractor to select his subcontractor for the same kind of job are firstly, to give the employer a greater flexibility to select the person he prefers; secondly, to allow the employer to negotiate directly with the subcontractor for the price and terms while at the same time avoids the multiplicity of any direct contract with the subcontractor; thirdly, by the subcontractor coming under

the wings of the main contractor would allow the main contractor to coordinate the different types of work to be carried out in the project.

[21] But such arrangement has various legal consequences. Since there is no privity of contract between the employer and the subcontractor, going by the general principle of the law of contract, the subcontractor cannot seek redress against the employer in the event of the main contractor failing to pay the subcontractor for the job done after the main contractor had collected payment from the employer. Or what would happen if there is a dispute between the main contractor and the employer unrelated to the subcontract resulting in the employer withholding payment to the main contractor who in turn refused to pay the subcontractor. There might also be a situation where the employer only made partial payment to the main contractor giving rise to a dispute as to a fair amount for distribution to the subcontractor. These are only some of the problems. There may be many others. This list is not exhaustive.

[22] From the series of cases cited to us by both the appellant and the respondent notably: *Northwest Metropolitan Regional Hospital Board v Bickerton & Sons Ltd* [1970] 1 All ER 1039; *Gloucestershire County Council v Richardson* [1969] 1 AC 480; *Interpro Engineering Pte Ltd v Sin Heng Construction Co Pte Ltd* [1998] 1 SLR 694, the approach adopted by the courts to deal with these varying sets of situation appear to fall back onto the construction of the contract between the parties as well as their deeds and actions in that transpired. There is no universal rational principle or test laid down for general application to each of the specific problems mentioned above.

[23] To cushion themselves from excessive loss in the event of the employer becoming insolvent and when the subcontractor has completed his work, some main contractors have resorted to drafting into the subcontract a 'pay when paid' clause. This literally means that the subcontractor will only be paid when the main contractor gets paid by the employer. Clause 10 in the agreement between the parties in this case is of this nature. But the issue in this case goes beyond this: can the main contractor after having been paid by the employer in the form of stocks rather than money in turn settle with the subcontractor in the same form he obtained from the employer?

[24] Having been unfavourably adjudicated by the courts below on this issue, the appellant initial thrust in this appeal before us is to argue that there is no contract between the appellant and the respondent and in the alternative, even if there is one, the contract is void for lack of consideration. This argument is based principally on this odd arrangement in the construction industry where, as described above, the respondent, as a

nominated subcontractor, was virtually thrust upon the appellant by the employer. The appellant has no say on the price of the subcontract nor the terms and conditions of work. The appellant further stressed that this arrangement of the appellant in appointing the respondent as a nominated subcontractor was merely an administrative convenience to allow the main contractor to coordinate the works of various subcontractors in order to be in tandem with the works of the main contractor so that the project can be completed expeditiously. There was in fact no consideration in this contract between the appellant and the respondent.

[25] We disagree with this contention of the appellant. Though this method of appointment of a nominated subcontractor may be peculiar to the building industry we cannot discard the fact that the appellant and the respondent had freely consented to enter into a contract in writing with terms and conditions governing the respective rights and obligations of the parties. The consideration in the contract is the right of the respondent to be paid by the appellant upon completing the subcontracted works as specified subject of course to the appellant first being paid by the employer. We do not deny that the appointment of the respondent was thrust upon the appellant by the employer but if the appellant were serious in objecting to such nomination there is very little in law the employer could do to force this upon the appellant. So the appellant here cannot deny that they had not freely consented to enter into this agreement with the respondent. In fact, in our opinion, this contract between the appellant and the respondent has all the hallmarks of a valid agreement described in s 10 of the Contracts Act 1950 which says:

> All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

[26] This answers the first and second ground of this appeal.

[27] The essence of the third ground of this appeal is the construction by the courts below on the means of payment is wrong on the face the factual matrix of this case. Regrettably we disagree. In both the letter of offer by the appellant to the respondent dated 30 November 1994 and the subsequent formal agreement entered into by the parties, the contract sum is explicitly spelled out in words as well as in figures with the currency fixed as 'Ringgit Malaysia'. Apart from this, there is no other form of payment ascribed. So upon the plain construction of these words in the contract between the parties, there can be no other form of payment or settlement with the

respondent except by money 'upon receipt of main contract payment from the Employer' which the appellant did when they accepted the said FGB ICULS stock.

[28] The appellant has argued before us that they have no option to reject these stocks as payment by the employer. This is not correct. From the correspondence found in the appeal record, we observed that the appellant did not object to this payment in the form of FGB ICULS stock nor register with scheme of companies their refusal or that of the respondent to accept this kind of payment. Having accepted this from the employer as payment for the main contract debt then under the terms of the subcontract, the appellant has no option except to pay the respondent in the form as stipulated — money rather that by the stock described.

[29] With this, we answer the sole question posed to us when leave was granted for this appeal:

> Whether the defendant (respondent) is obliged to accept the form of the payment received by the plaintiff (appellant) from the employer in respect of the air conditioning and mechanical works and the kitchen equipment works for the Merlin Subang (phase 2) project ('subcontract works'), ie in the form of FGB ICULS, instead of monies, in full and final settlement of the plaintiff's (appellant) outstanding debt to the defendant (respondent) in the amount of RM1,386,686.84 for the subcontract works ('the plaintiff's debt'),

in the negative.

CONCLUSION

[30] For reasons aforesaid, we dismiss this appeal with costs of RM80,000 and the deposit for this appeal to the respondent towards account of costs.

Appeal dismissed with costs.

Reported by Kohila Nesan